

LFC Requester:**Jon Clark**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**

Correction **Substitute**

Date January 21, 2016

Bill No: HJR 8

Sponsor: Rep. Paul C. Bandy

Agency Code: 305

Short Appointment of PRC Members,

Person Writing Rick Word

Title: CA

Phone: 827-6029

Email rword@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HRJ 8 proposes an amendment to the New Mexico Constitution that would, among other things, change the composition and manner of selection of members of the Public Regulation Commission (PRC). The proposed amendment would repeal Article XI, Section 1 of the New Mexico Constitution and replace it with a new Section 1.

Under the proposed amendment, the five PRC members would no longer be elected from districts, but would be appointed to at-large positions by the governor, with the advice and consent of the senate. The proposed amendment retains the prohibitions against members serving more than two terms consecutively or from accepting anything of value from a regulated person or entity.

In addition to providing for the appointment, rather than election, of PRC members, the proposed amendment also:

- requires that the commission include at least one New Mexico-licensed attorney, one engineer registered in New Mexico, one certified public accountant certified in New Mexico, and one person who worked at least five years in a regulated industry in New Mexico prior to assuming office but who is no longer working in such industry at the time they assume office, and one member of the public;
- specifies that the PRC is a full-time commission and that its members be residents of New Mexico;
- authorizes the legislature to provide additional qualifications for members;
- directs the legislature to provide continuing education requirements for members;
- provides that a member can be removed only for malfeasance, misfeasance, or neglect of duty following a hearing before the New Mexico Supreme Court, which has exclusive and final jurisdiction;
- requires that no more than three of the members be of the same political party at the time of their appointment.

HJR 8 further provides that the proposed amendment be placed on the ballot in the next general election or any special election prior to that date called for that purpose.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

1. Whether to return to a prior New Mexico practice to provide for appointed rather than elected officials to the body that oversees State public utilities. In its various iterations over recent decades, New Mexico has vacillated between having an elected State Corporation Commission, an appointed Public Utility Commission and as currently provided an elected Public Regulation Commission. States around the country have been similarly split. One argument for elected commissioners is that they are arguably more responsive to the voters and all the State's citizens as a result of having to run for election. An argument in favor of appointed Commissioners, particularly with criteria for professional backgrounds as provided in HJR 8, is that the body can be composed of officials with proven expertise in the often complicated issues and areas being regulated, which can result in better informed decisions.
2. Another significant change to be considered is whether to do away with the mandatory geographical distribution that is currently provided with the PRC Commissioners being elected from separate districts. Conceivably, under HJR 8 all the newly appointed Commissioners could be from the same exact area in the State.
3. The proposed constitutional amendment's provision that "[a] commission member shall be removed only for malfeasance, misfeasance, or neglect of duty after a hearing before the supreme court pursuant to court rules" (emphasis added) could be in conflict with, or create confusion as to the applicability of, other constitutionally sanctioned methods of removing public officials from office. One such method is impeachment. Article IV, Section 6 of the New Mexico Constitution states that "[a]ll state officials and judges of the district court shall be liable to impeachment for crimes, misdemeanors or malfeasance in office...". Another is the writ of quo warranto. Article VI, Section 3 vests original jurisdiction with the supreme court for quo warranto actions. As our supreme court recently noted, "[o]ne of the primary purposes of quo warranto is to ascertain whether one is constitutionally authorized to hold the office he claims". State ex rel. King v. Sloan, 2011-NMSC-020, ¶9, 253 P.3d 33. By providing that a commission member can only be removed for malfeasance, misfeasance, or neglect of duty, the proposed amendment suggests that a member could not be removed pursuant to a writ of quo warranto where, for instance, they no longer met a requirement for serving as a member such as being a resident of the state or not working in a regulated industry. Correspondingly, by providing that a commission member could only be removed after a hearing before the supreme court, the proposed amendment can be interpreted to at least suggest that commission members, as state officials, are not subject to impeachment. The supreme court recognized in the Sloan decision that "the related constitutional powers of legislative impeachment and judicial quo warranto can co-exist as part of a harmonious, constitutional whole. . .". Sloan, 2011-NMSC-020, ¶12, 253 P.3d 33. However, the use here of the qualifier "only" in the proposed amendment suggests otherwise.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SJR 7 is the companion joint resolution filed by Senator Steven P. Neville.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

The requirement in HJR 8 that there be at least one Commissioner who “worked in a regulated industry in New Mexico” may be problematic. If the intent is to require that it be in an industry regulated by the Public Regulation Commission, perhaps that should be stated explicitly. Otherwise, it might be argued that someone like a doctor or other health professional, a building contractor, realtor or anyone working in a profession “regulated” or overseen by a professional licensing board or commission, could be deemed to have worked in a “regulated industry”; and yet those persons would not be any more qualified than anyone else to oversee the specific utility industries regulated by the PRC.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

It might be helpful to specify in the Bill that the term “regulated industry” refers to an industry regulated by the PRC.